



Consultation Response
and Policy Paper: Financial
Services (Disclosure and
Provision of Information)
(Jersey) Law 202-

Background

1. On 17 January 2020, the Government of Jersey published a Consultation Paper seeking feedback on the draft Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- (the “Draft Law”).
2. The Draft Law seeks to implement certain requirements of the Financial Action Task Force (FATF) International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the 2012 Recommendations) ahead of the jurisdiction’s next Moneyval assessment.
3. The consultation closed on 21 February 2020. The Government received seven direct responses to the consultation and a response from Jersey Finance Limited which contained comments from two additional respondents. Those responses are summarised below and Government has stated its policy position in relation to questions posed.
4. Further questions or comments relating to this Consultation Response and Policy Paper may be directed to:

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Question 1: Are there any further bodies that should be included as an “entity” under the Draft Law? If so, please provide details.

1. The Consultation Paper explained that to meet the definition of legal person under FATF Recommendation 24 and to capture such entities as currently have interactions with the company registry, a definition of an “entity” is introduced under the Draft Law.
2. Respondents did not consider there should be a further expansion of the term “entity”. A number of the responses questioned whether it was appropriate to include a limited partnership as an entity as it does not have legal personality, unlike other vehicles included in the definition. Government agrees that a limited partnership is not a legal person and the inclusion of limited partnerships in the original draft was to reflect that limited partnerships have interactions with the company registry.
3. Updated Control of Borrowing Order consents (COBO consents) were issued to limited partnerships, alongside companies and other vehicles in 2017. These consents required entities to update beneficial ownership information within 21 days of a change.
4. Existing provisions in respect of anti-money laundering legislation continue to apply to limited partnerships. In respect of COBO consents issued to limited partnerships, it is intended that these will remain in force. Going forwards, limited partnerships will continue to be issued with COBO consents in their current form.
5. Respondents noted that limited partnerships were used by the funds industry and to include limited partnerships within the definition of an “entity” under the Draft Law may have implications for the competitiveness of the funds industry. Government notes that in their respective beneficial ownership legislation, the Isle of Man and Guernsey do not include limited partnerships.
6. Government therefore considers it is appropriate to remove limited partnerships from the scope of the Draft Law at present. The definition of an “entity” under the Draft Law may be amended by Order and should it be considered necessary to do so at a future date, there will be further full consultation with industry.

Question 2: Please provide any comments in relation to the definition of an entity’s significant person.

7. Respondents noted that “participating in the management of a partnership” is not defined in legislation in respect of limited liability partnerships. A definition has therefore been introduced clarifying the meaning as “being a person who is able to cause the partnership to take a particular action”.
8. The use of the phrase “body corporate” also raised questions as to what was intended. In the revised Draft Law each entity is instead identified separately and the significant persons in relation to that entity are specified. The catch-all provision is retained in addition to the ability to designate others as significant persons by way of Order.
9. The use of the word “manager” has also been removed from the definition, except where this is expressly relevant in relation to Limited Liability Companies (“LLCs”).

10. Respondents questioned the inclusion of a company secretary in the definition of significant person. While it is acknowledged that a company secretary is not an officer of a company, it is useful as a jurisdiction to centrally maintain details of company secretaries. Government therefore intends to require details of company secretaries to be provided to the Commission but recognises the commercial sensitivity of this information in some circumstances and it is not intended that this information is made publicly available. Company secretaries will therefore be excluded from the public register of directors and officers when the register is introduced.
11. This does not, however, remove the requirement for all companies to maintain at their registered office a register of directors and secretaries and for inspection of that register in accordance with Article 83 of the Companies (Jersey) Law 1991.
12. One respondent queried whether the definition of significant person should be aligned to the UK's definition of person with significant control ("PSC"). We do not consider this necessary as the UK PSC register intends to capture beneficial owners, whereas the definition of significant person intends to capture an entity's officers and directors (or those equivalent positions). A standalone definition of beneficial owner is provided under the Draft Law with a requirement for the Commission to issue guidance on identifying beneficial owners.

Question 3: Do you consider any further details should be required by regulations as "significant person information"?

13. The majority of respondents did not consider that any additional details should be provided. A number of respondents suggested that "occupation" should not be provided. It was emphasised that information should correspond with that which is required to be collected under the relevant entity legislation.
14. In order to ensure the accuracy and integrity of the register, certain information will be required to be provided in relation to the significant persons. As international standards continue to evolve, Government considers the appropriate means of specifying the information to be provided is by way of Order. This allows sufficient flexibility to react to changing standards.
15. Government notes the concerns expressed and will continue to engage with industry and the Commission as the secondary legislation is drafted, noting the need for analysis of the terminology used under the relevant entity legislation. Appropriate transitional provisions will ensure sufficient time to obtain and provide any additional information.
16. It should also be recognised that not all information required to be provided to the Commission will be displayed on the public register of significant persons.

Question 4: Please provide any comments in relation to the definition of beneficial owner.

17. Respondents noted difficulties with the replication of the FATF definition of "beneficial owner" in that it uses terms that are not defined in the Draft Law. In order to address these issues, references in the definition to "legal person" and "customer" have been replaced with "entity".

18. Comments were also received in relation to the guidance the Commission may issue on the definition of “beneficial owner”. Some respondents considered that this should be an express requirement on the Commission to issue guidance and the Draft Law has been amended to reflect this.
19. Other respondents suggested that guidance should be available in advance of the Draft Law coming into force. Government will continue to work with the Commission on the preparation of guidance and take steps to facilitate the appropriate consultation with industry.
20. Respondents helpfully suggested some topics for inclusion in the guidance, which included:
 - a. Foundations and entities owned by trustees of a trust;
 - b. Secured parties holding interest in an entity by way of security;
 - c. Meeting international standards on beneficial ownership; and
 - d. More rigid ruleset for identifying beneficial owners.

Question 5: Please provide any comments on the requirements to provide information to the Commission

21. Several respondents noted an inconsistency between the terminology used at Article 2(3) and Article 4(2)(b). The reference in Article 2(3) has been removed in any event to reflect that entities intending to list on a regulated market would be required to provide beneficial ownership information to the Commission on application to incorporate. The exemption from providing ongoing beneficial ownership information for listed entities remains at Article 4(2)(b).
22. A number of respondents questioned whether beneficial ownership information should be included in the annual confirmation statement. It is intended that beneficial ownership information will be required to be confirmed as accurate in the annual confirmation statement. It is anticipated that further information regarding the annual confirmation statement will be forthcoming via industry outreach events hosted by the Commission. It should be noted, however, that the annual confirmation statement differs from the annual return and is unlikely to be available to be downloaded as is currently the case with annual returns. Beneficial owner information and other private information about an entity held by the Commission will not be available for purchase or download.
23. For existing entities, a transitional period is also permitted for the filing of the first annual confirmation statement and this period may be extended by notice published by the Commission. This should alleviate any concerns regarding the quantity of data required to be provided in the annual confirmation statement.
24. Respondents also considered the mechanisms for searching of any public aspect of the register. This was also referenced in the [consultation response and policy paper](#) on the implementation of 2012 FATF recommendations on anti-money laundering and countering the financing of terrorism. Steps are being taken by the Commission to restrict data mining. Government will continue to work with the Commission and industry to consider the search functionality of the new system.

Question 6: Please detail any further information that you consider should be provided in the annual confirmation statement.

25. Respondents urged consistency (both in respect of terminology and content) between the information required under the Draft Law and the information required under relevant entity legislation.
26. Government recognises these comments and on reflection considers that it would not be appropriate to include data fields in primary legislation. The information to be prescribed will be set out in an Order, following further consultation with industry and the Commission. This provides added flexibility to adapt to the ever-changing international landscape.
27. One respondent queried whether the annual confirmation fee will replace the annual return fee. Government intends to make consequential amendments to repeal existing annual return requirements, including fees. Government is further considering the necessary consequential amendments and impact of repealing legislation and will consult further with interested parties on this issue.

Question 7: Are there any additional persons that should be permitted to act as an entity's nominated person?

28. Respondents were largely supportive of the proposals in respect of who may act as an entity's nominated person. A number of respondents suggested that it may be appropriate to expand the category to include regulated trust companies providing registered office only services.
29. Government agrees that it would be helpful to expand this provision to include registered office only services to ensure that additional burdens are not placed on entities.
30. One respondent proposed including non-Jersey resident directors. As this does not fulfil the FATF requirement that the person be either a natural person resident in the jurisdiction or a regulated trust and company service provider, Government is not minded to make such a revision to the Draft Law.
31. One respondent objected to the proposal to permit lawyers and accountants to act as an entity's nominated person as they are not regulated by the Commission, suggesting that certain requirements should only be fulfilled by a regulated TCSP, FSB or employed officer of the company. It was suggested that to do otherwise would result in a lessening of regulatory oversight.
32. Government notes the concerns expressed, however intends to retain these provisions in the Draft Law for the following reasons:
 - a. Lawyers and accountants are regulated by the Commission for AML purposes;
 - b. Lawyers and accountants are supervised by their own regulatory bodies and must adhere to high standards;
 - c. The role of the nominated person is to file the information and provide assistance to local competent authorities to the extent possible, not to undertake any

interpretation of beneficial ownership requirements, which is an obligation of the entity;

- d. Local businesses are not required to appoint regulated officers or a regulated TCSP and to remove the ability for lawyers and accountants to act as nominated persons limits the options available to local businesses;
- e. The FATF Recommendation permits jurisdictions to apply equivalent measures relevant to their jurisdictions. Government considers the inclusion of lawyers and accountants as an equivalent provision.

Question 8: Should a natural person resident in the jurisdiction be required to have a connection with the entity (as a significant person) in order to be its nominated person? If no, please provide further comments.

- 33. The majority of respondents agreed that it was sensible to limit natural persons resident in the jurisdiction permitted to act as a nominated person to those that were significant persons of the entity.
- 34. One concern was expressed in relation to Jersey companies that are tax resident in other jurisdictions. Government is satisfied that such companies would be covered by expanding Article 6(1)(a) to include registered office services, as detailed above.

Question 9: Please provide any examples of public interest considerations to be taken into account when drafting Regulations under Article 8(7).

- 35. Respondents suggested the following considerations would be relevant:
 - a. Preventing public disclosure of sensitive personal data relating to natural persons;
 - b. Preventing public disclosure of any information relating to a natural person who is a minor or who is suffering from a mental health incapacity rendering that person unable to manage their own affairs;
 - c. Preventing or reducing the risk that the public disclosure of particular/specific information relating to a natural person would or could reasonably be expected to cause that person or another natural person material physical or mental harm;
 - d. Safeguarding national security.
- 36. Government was also directed to standards in the UK on public disclosure of sensitive information and certain public functions.
- 37. Government is grateful for the responses to this question which will be given further consideration during the drafting of secondary legislation. Government will continue to engage with industry and the Commission during this period.

Question 10: Do you consider that there are specific circumstances to be included as grounds to permit an application by an entity to suppress information from the publicly accessible section of the register? Please provide details.

38. The majority of respondents referred back to their answers to question 9 of the consultation paper, with one respondent commenting that applications should be considered on a case by case basis.
39. One respondent further commented that there should be a cost for access and access should be restricted to one record per search in order to prevent data mining/bulk downloads of the register. While some information will be accessible at no cost, there are likely to be charges for accessing information where value is added by the Commission. In addition, as stated above, the Commission is taking steps to address the concern of data mining.
40. Three respondents expressed concerns in relation to the policy decision to require foundations to file their regulations with the registrar and for the regulations to be made publicly available. This policy decision was made following a separate consultation by the Jersey Financial Crime Strategy Group (JFCSG) in 2018. The consultation response paper was published in 2019.
41. Government recognises the concerns around personal information contained in the regulations of a foundation and further recognises the need to strike the right balance between achieving compliance with international standards and protecting sensitive information. Government has therefore considered the approach taken in the Isle of Man, noting that legislation was introduced in June 2019 to incorporate recommended changes following its Moneyval assessment. The changes included a requirement for foundations to file “a copy of the foundation rules within which any information from which a person can or may be identified has been redacted” and for that document to be kept and made available for public inspection.
42. In light of the need to protect personal and sensitive information and having considered the approach in the Isle of Man, the Government will not require a foundation to file its full regulations with the Commission, but an abridged version in which information by which a person can be identified is redacted. The abridged regulations will be available for public inspection. Further guidance will be issued in advance of the coming into force of the Draft Law respect of the content of abridged regulations.

Question 11: Do you consider that there are additional circumstances in which disclosure of information should be permitted? Please provide details.

43. Respondents who answered this question did not consider there were any additional circumstances in which information should be permitted to be disclosed.

Question 12: Do you envisage any unintended consequences arising as a result of the provisions of Articles 9-12 of the Draft Law? Please provide details.

44. Several respondents queried the rationale for including Article 9(6) which required the Commission to provide assistance to foreign competent authorities, without exception. It was noted that the Commission has a number of existing exchange of information agreements. Respondents considered that the Commission should not be required to provide information unless it is appropriate to do so within Jersey’s existing information sharing framework.

45. The rationale for including this provision was to meet the requirements of the FATF Methodology for Technical Compliance (paragraph 24.14) however, Government acknowledges that there should be appropriate safeguards in place to address the concerns expressed. The provision in the Draft Law has therefore been amended to permit the Commission to share information, where it receives a request from a foreign competent authority rather than to require it. This amendment allows the Commission to consider requests for assistance on a case by case basis and respond accordingly.
46. The Draft Law now also provides that the Commission may disclose information it holds to a local competent authority, which is defined as the Commission, the Joint Financial Crime Unit of the States of Jersey Police Force, the Attorney General and the Minister (in relation to responsibilities under the Sanctions and Asset Freezing (Jersey) Law 2019).
47. A number of respondents questioned whether Article 11 (now Article 12 under the revised Draft Law) should expressly reference data protection laws. Government has not included such an amendment as any data protection requirements under the Data Protection (Jersey) Law 2018 that can be met while meeting the requirements of the Draft Law should continue to be met.
48. One respondent commented that the reference to “regulatory officer” in Article 9 (now Article 10 under the revised Draft Law) was unclear. A definition of “regulatory officer” is included at Article 10.
49. It was also commented that the Commission must ensure that any information held in its systems which exceeds the beneficial owner information and significant person information is not publicly exposed. Government agrees with this comment and understands that work is ongoing within the registry function of the Commission to ensure the appropriate register and systems are in place and have been thoroughly tested before the Draft Law is brought into force.

Question 13: Please provide any comments in relation to offences under the Draft Law

50. Concerns were expressed in relation to entities committing criminal offences under the Draft Law. The FATF standards require there to be liability and proportionate and dissuasive sanctions for legal or natural persons that fail to comply with requirements. Government therefore considers it is appropriate to include criminal offences for entities, in addition to late filing fees and strike off provisions.
51. Government, does, however recognise that in some circumstances the entity may not be able to comply with requirements under the Draft Law and has introduced ‘reasonable excuse’ provisions to reflect this in respect of some offences.
52. Furthermore, the offences will require prosecution by the Attorney General in the usual manner and prosecutions will only be brought where there is a public interest in doing so.
53. It was suggested that financial penalties may be appropriate, however, Government is concerned that financial penalties are not sufficiently dissuasive for all entities. Furthermore,

the Commission's ability to issue civil penalties exists only within the framework of regulated businesses for breaches of Codes of Practice.

Question 14: Please provide any comments in relation to the ability for the Commission to charge fees

54. A number of respondents commented on the need for any fees to be reasonable, proportionate and transparent. The need to remain a competitive jurisdiction in respect of fee charges was also raised. The Draft Law requires the Commission to consult on and publish any fees in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998, which Government considers will provide the necessary levels of transparency and proportionality.
55. Comments were also received in relation to the payment of fees under Article 7. This reflects the current provisions of "relevant entity legislation" and is intended to maintain the status quo.

Question 15: Do you consider that there are further specific regulations required in order to make the Draft Law effective?

56. Respondents who answered this question did not consider further specific regulations were required.

Question 16: Do you consider any particular aspect of the Draft Law would benefit from a Code of Practice?

57. Generally, respondents did not consider that that a Code of Practice was required, noting that Codes of Practice only apply to entities regulated by the Commission under the regulatory laws.

Question 17: Please provide any comments in relation to the transitional and consequential amendments

58. Respondents considered that an opportunity to review consequential amendments would be beneficial. Government intends to continue the consultation with industry and the Commission in relation to the development of secondary legislation. It is intended that a public consultation on the secondary legislation will be issued over the course of the summer.
59. It was commented that consultation with industry was necessary on the proposed amendments to the Foundations Law. Government has taken into account the concerns expressed by industry in relation to filing foundations regulations and has adapted the Draft Law accordingly. This includes responses received in relation to this consultation in addition to the earlier consultation on the implementation of FATF requirements. As set out above, in order to comply with the FATF requirement, foundations will be required to file an abridged version of their regulations with any information from which a person may be identified removed. Further guidance will be forthcoming in due course.

60. A concern was expressed regarding potential duplication of inputting of data. The Commission is taking all steps to minimise any duplication, including the use of multi-action forms and convenience tools. Further details will be communicated to industry through Commission led outreach events.
61. It was noted that if additional information was required to be provided under the Draft Law that exceeded current requirements, transitional provisions would be required to ensure service providers had time to comply. Government has included transitional provisions for existing entities until the end of the first filing period for the annual confirmation statement.

Question 18: Please provide any comments in relation to the interaction between the Draft Law and the Control of Borrowing (Jersey) Law 1947 (the “COB Law”) and the Control of Borrowing (Jersey) (Order) 1958 (the “COBO”).

62. The majority of respondents considered that the Commission should utilise technical solutions to ensure the efficiency of information provision under the COBO/COB Law and the Draft Law. We have shared this feedback with the Commission.
63. One respondent considered that existing COBO consents should be amended from the date on which the Draft Law comes into effect. The Commission is considering the impact of the Draft Law on existing COBO consents and the options available.

General comments

Definition of regulated market

64. Several respondents considered that the definition of “regulated market” was too narrow. Government has therefore expanded the definition in the Draft Law to also include exchanges listed in the Companies (Transfer of Shares - Exemptions) (Jersey) Order 2014 and IOSCO compliant exchanges.

Approach to beneficial ownership information

65. One respondent queried the approach to collection of beneficial ownership information. For the avoidance of doubt, the purpose of the Draft Law is to put the requirement from the conditions of the COBO consents in respect of filing and updating beneficial owner information on a statutory footing.
66. A concern was also expressed in respect of potential over-disclosure of beneficial owner information. In June 2019, the Government of Jersey, along with Guernsey and the Isle of Man, announced its policy and approach to disclosure of beneficial owner information. The Government of Jersey intends to consider the approach taken by other jurisdictions, including lessons learned in the European Commission’s review of Member State implementation of the Fifth Anti-Money Laundering Directive. Further consultation with industry will be forthcoming in due course.

Updating of director information

67. A number of respondents raised concerns of inefficiencies where, for example, professional directors were unable to update their own information on the register. It is intended that a

nominated person will be permitted to update the credentials of any person (including directors and beneficial owners) in a single transaction for any entity for which they are appointed a nominated person.

Share transfer companies

68. One respondent expressed a concern in respect of the intention to publish details of directors of share transfer companies on the public register of significant persons. Government is considering necessary exemptions to provisions of the Draft Law and intends to bring forward legislation to exempt details of directors of share transfer companies from the public register, where they relate to owners of private residential property.

Privacy and data protection

69. The Jersey Finance response paper suggested that issues previously raised by the Information Commissioner do not appear to have been addressed. We understand that the matters raised in the Jersey Finance response paper relate to comments from the European Data Protection Supervisor and publications relating to public registers of trusts and beneficial owners. The Draft Law does not create a register of trusts and does not make public any information relating to the beneficial owners of Jersey entities. Government has engaged with the Jersey Office of the Information Commissioner during the development of the Draft Law and will continue to do so during the development of secondary legislation and on the implementation of its wider beneficial ownership policy more generally.

Other

70. In order to ensure full compliance with the FATF recommendation, a further provision has been inserted at Article 9 requiring defined persons (nominated persons, significant persons and entities) to provide further assistance to local competent authorities within a specified timeframe. This includes provision of information and attendance for interview. Local competent authorities are defined as the Commission, the Joint Financial Crime Unit of the States of Jersey Police, the Attorney General and the Minister for External Relations (in respect of responsibilities under the Sanctions and Asset Freezing (Jersey) Law 2019). This provision is included to ensure compliance with paragraph 24.8 of the FATF Methodology.

Next steps

71. It is intended that the Law will be lodged to be scheduled for debate on 14 July 2020. Government will continue to engage with industry and the Commission on the necessary subordinate legislation required under the Draft Law.
72. Government recognises the impact of Covid-19 on both the finance and wider industry and will continue to engage in respect of how the Draft Law and secondary legislation is brought into force.

